JD–08–04
Jessup, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

J & R ROOFING COMPANY, INC.

and CASE 5–CA–30193

UNITED UNION OF ROOFERS, WATERPROOFERS
& ALLIED WORKERS, LOCAL No. 30

Christopher R. Coxson and *Thomas J. Murphy, Esqs.*
for the General Counsel.
Frank L. Kollman and *Desmond T. McIlwain, Esqs.,*
(Kollman & Saucier, P.A.), of Baltimore, Maryland,
for the Respondent.
Irwin W. Aronson and *Kimberly Neeb, Esqs.*
(Willig, Williams & Davidson), of Philadelphia, Pennsylvania,
for the Charging Party.

DECISION

Statement of the Case

John T. Clark, Administrative Law Judge. This case was tried in Baltimore, Maryland, on September 9 through 12, and December 9, 2002. The charge was filed January 28, 2002[1] and the complaint was issued May 28. The complaint alleges that J & R Roofing Company, Inc., (Respondent) violated Section 8(a)(1) and (3) of the National Labor Relations Act (Act) by refusing to hire and consider for hire eight job applicants because of their affiliation with the United Union of Roofers, Waterproofers & Allied Workers, Local No. 30 (Union).

The complaint also alleges that the Respondent violated Section 8(a)(1) of the Act by telling the applicants that it did not, and would not, hire any person affiliated with the Union or any other labor organization; by threatening to throw away the applications of any individual affiliated with the Union or any other labor organization; by throwing into a trash can applications completed by applicants for employment who were affiliated with the Union; and by using a written employment application form that included a question asking applicants for employment if they were union members.

The Respondent's answer denies the allegations. The parties were afforded a full opportunity to appear at the hearing, present evidence, examine and cross-examine witnesses, and file posthearing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the counsel for the General Counsel and the Respondent, I make the following

[1] All dates are in 2002 unless otherwise indicated.

Findings of Fact

I. JURISDICTION

The Respondent, a Maryland corporation, is a roofing contractor in the building and construction industry with an office and place of business in Jessup, Maryland, where it annually received goods valued in excess of $50,000 directly from points located outside the State of Maryland. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The Respondent is a commercial roofing contractor that performs roofing projects at various sites located between Richmond, Virginia and Philadelphia, Pennsylvania. The Respondent advertises employment opportunities in newspaper help-wanted sections and, at all relevant times, had the following sign posted outside its facility:

HELP WANTED
FOREMAN
ROOFERS
LABORERS
SHEET METAL MECH.
APPRENTICES

The Respondent also hires individuals who go to the jobsite looking for work. These individuals are hired by the job foreman, without completing an application. Individuals who apply at the Respondent's facility are required to complete an application. The Respondent admits that at all relevant times the first page of the application had a question asking if the applicant was a union member, and if so, to provide the name of the union and the local. After completion of the application the individual is interviewed by a member of management.

In the August 4 and 5, 2001 editions of the Baltimore Sun and Washington Post the Respondent placed help-wanted advertisements for roofing foremen and mechanics. The alleged discriminatees learned of the advertisements and, on August 9, 2001, drove to the Respondent's facility to apply for work.

B. Events of August 9, 2001

Upon entering the reception area of the Respondent's facility Fred Hammel, an alleged discriminatee, told the receptionist, Cathi Duhamel, that the group wished to apply for employment. Duhamel distributed the applications. Mike Bailey, an alleged discriminatee, testified that either he, or another discriminatee, asked how long the applications were kept on file. Bailey testified that Duhamel replied that they were kept on file indefinitely. Bailey testified that he thought her response odd, which is why he remembered it. Duhamel testified that she said that she thought they were held for a year. I credit Bailey's version not only because of his overall testimonial demeanor, but also because it is consistent with other statements that he made.

The nine individuals (only eight of whom are alleged as discriminatees) began filling out the applications. Because of the small area the individuals used the entire counter, as well as occupying chairs in the rear of the reception area. The conduct of the discriminatees while they were completing their applications, as well as other matters concerning the events of the day, are in dispute. There is conflict regarding the sequence of events, not only between the General Counsel, and the Respondent's witnesses, but among the Respondent's witnesses. The following findings are based on my observation of witness demeanor, the established or admitted facts, and inherent probabilities and reasonable inferences that may be made from the record as a whole.

The testimony of the alleged discriminatees is, in essence, that they conducted themselves in a professional manner. It is not disputed that discriminatee William Reis caused a candy dish to fall from the counter and break, that he apologized, swept up the shards, and offered to pay for the dish. Reis credibly testified that he was bumped by another discriminatee which caused him to knock the dish off the counter. Duhamel admitted that she did not witness the incident but attributed the cause to the discriminatees "roughhousing." I credit Reis' testimony of what happened over Duhamel's testimony as to her conclusion as to what happened.

Jacquelyn Ruff the Respondent's former payroll administrator appeared and gave testimony regarding the alleged discriminatees' conduct. Ruff's demeanor appeared to be that of a truthful witness who was making an honest attempt to recollect what happened. She is also no longer employed by the Respondent. I found her to be a totally creditable witness. Ruff testified that she could not recall if she was summoned by Duhamel, or went to the reception area on her own because of the noise. Duhamel also could not remember if she called Ruff or if Ruff came of her own volition. In any event, Ruff testified that the men were loud, talking over each other, and playing around. Duhamel asked Ruff not to leave her "up here by myself with all these guys." Ruff stayed in the reception area for between 5 to 10 minutes. She left when Vice President Edward Taylor arrived at the counter. I credit Ruff's testimony and I also find it probable that she went to the reception area to investigate the noise. Had Duhamel felt it necessary to request assistance I believe Duhamel, as well as Ruff, would have remembered such an unusual and presumably memorable, request for assistance.

Duhamel further stated that she saw Taylor's enter the building, at some point after Ruff arrived in the reception area. Duhamel went to his office and told him there were applicants in the reception area, if he wanted to interview them. This was the normal procedure. She also testified that she told him that the men were loud, obnoxious, and fooling around. (Tr. 1049–1052.) Taylor was unsure if he was summoned by Duhamel or went forward because of the noise, but he was certain that he was present when the dish fell. I credit Duhamel's testimony that she went to Taylor's office because she appeared more certain than Taylor regarding that fact. I also note that Taylor, after some obfuscation, admitted that he went to the reception area to interview the men for jobs, as he typically did, if he was available when applicants applied for work. His admission is consistent with Duhamel's testimony as to why she went to his office. Taylor conversely appeared to have no reservations concerning the fact that he was present when the dish fell. His testimony regarding the dish is also consistent with his affidavit, and I credit his testimony regarding that fact.

At a point in time after the dish was broken Valerie Lilly, the Respondent's chief financial officer, entered the reception area. Valerie Lilly testified that she went into the area to retrieve her mail, leave some documents, and to ask Duhamel if she, Lilly, had any phone messages. Duhamel testified that as Lilly was approaching the reception area some discriminatees began

mumbling comments under their breath such as “Oh baby.” “Yeah, I want to work here. Mmm, get me some of that.” (Tr. 1024.) Although Valerie Lilly also overheard the comments she continued about her business. She testified that she walked over to Duhamel, spoke with her about assignments that needed to be performed, received her phone messages, and got her mail. She then went to her office to return her phone calls. Although Taylor testified that he was present he only heard one of the men say, “Boy, I’d like to work here.” His testimony was consistent with his affidavit. On cross-examination Lilly specifically denied that Taylor was present when the comments were made.

I credit the testimony of the Respondent’s witnesses over the denials of the eight alleged discriminatees and find that at least one of the alleged discriminatees made the remarks that were overheard by the Respondent’s witnesses. As Duhamel explained, the comments were unusual and stuck in her head (Tr. 1042). I also credit Taylor’s testimony, which is consistent with his affidavit, regarding this incident, over Lilly’s denial that he was present.

Valerie Lilly also testified, in contradiction of her affidavit, that after making the phone calls she again walked past the men on her way to lunch. Duhamel agreed with Lilly’s recollection. However, in her affidavit, Lilly stated that she did not exit her office until the men had departed the reception area. I do not credit her testimony where it is contradicted by her affidavit. Not only was the affidavit given at a point closer in time to the events, but her explanation for the contradiction, that the statement was taken out of context, is not convincing. I also do not credit her testimony that she told her brother, the Respondent’s president, about the remarks when they returned from lunch. Her affidavit states that she told him, along with Vice President Taylor, that evening. When asked to explain why she failed to include her initial conversation with her brother in her affidavit she could only offer that she, “may have mentioned it. . . . I don’t know” (Tr. 1120.)

Frederick Hammel, a union organizer during the relevant period and an alleged discriminatee, testified as to his recollection of events. Hammel said that about 5 minutes after the men started filling out the applications Taylor entered the reception area. Taylor stated his name, handed out his business card, and began talking with Hammel about the applicants’ qualifications. Hammel testified that it was he who was primarily talking with Taylor. After the applications were given to Taylor, Hammel told him that they were union organizers and that if they were hired they wanted to organize his shop on their own time. Taylor replied that the Respondent was a merit shop and that the Respondent would not hire anybody affiliated with the Union or any other labor organization. He told them to go to a union company to get the wage rates that they wanted.

Hammel replied that the men wanted to work for, and organize, the Respondent. Taylor admitted that he responded by saying that he might as well just “shit can” their applications right now (Tr. 107) or with a similar statement (GC Exh. 4 at 4). After hearing Taylor’s statement alleged discriminatee Bailey told Taylor that he, Taylor, “couldn’t do that simply because the secretary said they would be held indefinitely” (Tr. 201). Bailey further testified that Taylor said “watch me” and dropped the applications in the trash can. Bailey’s testimony was corroborated by Hammel and both men specifically stated that they saw Taylor drop the applications in the trash can as alleged in the complaint (Tr. 227, 993). The other alleged discriminatees testified that although they heard Taylor’s statements they did not see him actually drop the applications in the trash can.

Taylor admits he made the statement about discarding the applications. In Taylor’s version, however, the only response is laughter by the alleged discriminatee who said they intended to organize the Respondent (Tr. 166). Duhamel supports Taylor’s version, but she

also specifically denies that Taylor dropped the applications in the trash can.

I find, based on their demeanor when testifying about this incident, that the alleged discriminatees appear to be more credible than the Respondent's witnesses. I find the testimonial demeanor of Taylor and Duhamel did not appear to be that of individuals who were making honest and sincere efforts to recount the facts to the best of their recollection. Taylor especially did not appear forthcoming in his testimony. It was only on cross-examination that he admitted that his reason for coming to the reception area was to interview the men (Tr. 181). I also note that when testifying he did not specifically deny dropping the applications in the trash. In addition to her testimonial demeanor, I observed that Duhamel appeared uncomfortable, and most willing to change her testimony, when she testified contrary to Taylor (Tr. 1052). In this regard I note that she Duhamel was only 19 years of age at the relevant time, had only been the receptionist for a year, and she, "worked for pretty much everybody in the building."

Jeffrey Lilly, Respondent's president and brother of Valerie Lilly, also testified. He stated that he observed the alleged discriminatees on his way lunch. He testified that they were "outrageously noisy," "pushing one another at the counter, and one particular guy was hammering the counter for some reason." However, because he was with individuals with whom he wished to do business, when asked, "did you stop" he replied, "No. Unfortunately, you know, I didn't want our bonding company, let alone a bank, to feel like a roofing operation was the wild, wild west, so I overlooked it" (Tr. 1080).

Jeffery Lilly states that while he was in the Respondent's parking lot, after lunch, his sister told him of the comments. Upon entering the building Taylor told him of his experience with the alleged discriminatees. After hearing from his sister, and Taylor, Lilly "felt like we were set up." He claims that he reviewed the applications and then called his attorney. His attorney advised sending the letters to the alleged discriminatees. The letters mention sexual harassment of a female member of management and each letter lists incomplete items on the individual's application. The letters all conclude that "for these reasons" the applications are rejected. (R. Exhs. 17-25.) Jeffery Lilly admitted that he read and signed the letters and that, contrary to the statement contained in the letters, the applicants were rejected solely because of the alleged discriminatees behavior.

C. Analysis and Discussion

1. Alleged independent 8(a)(1) violations

a. Interrogating applicants about union membership

It is undisputed that during the relevant period the Respondent's employment application contained a question asking if the applicant was a union member. President Lilly testified that the application had been used since about 1980 and that he was unaware that it contained the question about union membership.

The standard for determining if an interrogation is coercive is whether, under all the circumstances, the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. Furthermore, it is well established that questions involving union membership and union sympathies, in the context of job interviews and applications, are inherently coercive and thus interfere with Section 7 rights, and this is true regardless of whether the applicant is hired. E.g., *Action Multi-Craft,* 337 NLRB 268, 276 (2001); *Culley Mechanical Co.,* 316 NLRB 26, 27 fn. 8 (1995); *Rochester Cadet Cleaners, Inc.,* 205 NLRB 773 (1973).

I find that the Respondent violated Section 8(a)(1) of the Act by interrogating applicants for employment by using a written application form that contained a question concerning the applicant's union affiliation.

2. Telling applicants that the Respondent did not, and would not, hire any person affiliated with the Union or any labor organization

The alleged discriminatees all similarly testified that Taylor told them that he did not and would not hire any person affiliated with the Union or any labor organization. Taylor admitted that some of the alleged discriminatees were wearing clothing indicating they were union members. Taylor does not deny making the statement, nor does the Respondent argue to the contrary in its brief. Counsel for the General Counsel cites *Galloway School Lines, Inc.,* 321 NLRB 1422 1424 (1996), as a case where the Board found a violation of Section 8(a)(1) when the employer's president told union applicants that the company was not and would never be Union, and that he would not hire union workers.

Accordingly, I find that the Respondent has violated Section 8(a)(1) of the Act as alleged in the complaint.

3. Threatening to discard the application of any individual affiliated with the Union or any labor organization

Taylor admits telling the alleged discriminatees that he would "shit can" their applications. Counsel for the General Counsel contends that this statement indicates that it is futile for union members to apply for employment with the Respondent and as such violates Section 8(a)(1) of Act. I agree and find that the Respondent has violated Section 8(a)(1) of the Act as alleged in the complaint. See generally *Little Rock Electrical Contractors,* 336 NLRB 146,153 (2001).

4. Discarding the applications of individuals affiliated with the Union

Having found that it is a violation of Section 8(a)(1) to threaten to discard the applications of members of labor organizations, it follows that it is also a violation to discard the applications. Based on the credited testimony of the alleged discriminatees, I find that Taylor dropped their applications in the trash can, thereby violating Section 8(a)(1) of the Act as alleged in the complaint.

2. Alleged 8(a)(3) violation

a. Respondent's failure to hire the applicants

This case involves the practice of "salting." Salting is when a union sends a member to apply for employment at a nonunion employer. The object of the union member is to be hired and then organize the employer from within. For a more extensive definition see *Tualatin Electric,* 312 NLRB 129, 130 fn. 3 (1993), enfd. 84 F.3d. 1202 (9th Cir. 1996). The salting strategy may be overt, as here, where the applicants tell the employer of their union affiliation and that they will attempt to organize the employees within the parameters of the Act, or covert, where the union affiliation and the objective of the applicants is not announced. Under either scenario applicants who are also union organizers retain their status as statutory employees. *NLRB v. Town & Country Electric, Inc.,* 516 U.S. 85 (1995).

In *FES* 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002), the Board set forth the analytical framework for refusal-to-hire violations. The General Counsel must show that:

> (1) that the Respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. [Footnotes omitted.]

[Id. at 12.] Once the General Counsel has established these elements, the burden shifts to the employer to show that it would not have hired the applicants even in the absence of their union affiliation or activities. *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The Respondent does not dispute that counsel for the General Counsel has met his burden regarding the first two criteria. The newspaper advertisements and the help-wanted sign demonstrate concrete plans to hire during the relevant time. The evidence establishes that the Respondent hired four laborers and one mechanic on the day that the alleged discriminatees applied, and that from August 9, 2001, until July 12, 2002, the Respondent hired 21 mechanics, and 36 laborers. Testimony was given, and a stipulation between the parties received, establishing that all the alleged discriminatees are "qualified and able to perform the work of a journeyman mechanic roofer and a journeyman mechanic sheetmetal worker as well as the work as a laborer or apprentice with respect to all work performed by [the Respondent] during the relevant period" (Tr. 238–239).

With regard to union animus, I have found that the Respondent has violated Section 8(a)(1) of the Act by maintaining an application form that interrogated applicants about their union membership; that Vice President Taylor told the alleged discriminatees that the Respondent never had, and never would, hire union members; that he would discard the alleged discriminatees applications and that he did discard their applications, because they were affiliated with a union. Accordingly, the record amply supports a finding that antiunion animus contributed to the Respondent's decision not to hire the alleged discriminatees.

b. Respondent's defenses

The Respondent contends that it would not have hired the alleged discriminatees even in the absence of their union affiliation. The Respondent asserts that its "decision not to hire any of the alleged discriminatees was based solely on their behavior at the time the individuals applied" (R. Br. 4). I disagree, and find that the reason advanced by the Respondent for its action is a pretext. I find the pretext to be additional evidence that the real reason the Respondent did not hire the discriminatees was their union affiliation.

The testimony and actions of the Respondent's witnesses present the best evidence that behavior was not the real reason the Respondent did not hire the discriminatees. Duhamel, the Respondent's receptionist, testified that she performed her duties in a routine manner, she provided the discriminatees with applications, and asked Vice President Taylor to interview them. She had a work discussion with Valerie Lilly, gave Lilly her phone messages, and did not testify with specificity that the conduct of the alleged discriminatees was disruptive of her work. She did not rebuke, or even address the men, concerning their sophomoric behavior. Although the group was loud and boorish, Duhamel did not feel it necessary to ask Valerie Lilly to stay or,

as I have found, to summon assistance. When Ruff arrived in the reception area, Duhamel did not hesitate to leave Ruff, who was obviously pregnant, alone with the men while she went to Taylor's office.

Chief Financial Officer Valerie Lilly testified that she overheard crass comments about her as she entered the reception area. Lilly's reaction was to do nothing. She did not confront, she did not turn on her heel and exit the area, she did not tell Taylor not to hire the men, she did not even give them a look of disgust. She completed her business, went to her office, and returned her phone calls.

President Jeffery Lilly observed the group while he was with banking and insurance representatives. He "overlooked" the conduct because he did not want his luncheon companions "to feel like a roofing operation was the wild, wild west." I find his statement incongruous.

Taylor observed the discriminatees as he entered the building. He characterized what he saw as a circus (Tr. 107, 149). His reaction—he went to his office. Duhamel went to Taylor's office, as she usually does "to let him know that there were people up front filling out applications" (Tr. 1051). Taylor admitted, albeit grudgingly, that the reason he went forward was to talk to the applicants. This is also standard operating procedure. (Tr. 180.) I find Duhamel's testimony concerning Taylor's actions at this point telling. After Taylor came to the reception area, she states, "he was having conversations with the applicants in the office asking them their qualifications and what they do now. Normal questions he would ask any applicant." Thus, it is apparent that regardless of the discriminatees conduct the Respondent's decision not to hire them, as articulated by Taylor's statement that he was going to shit can their applications, did not occur until Taylor was told that they were going to try and organize the employees. Cf. *Exterior Systems, Inc.,* 338 NLRB No. 82 (2002) (where the Board adopted an administrative law judge's finding that the conduct of the applicant was disruptive and disrespectful and, based on the credited testimony of the employer's witnesseses, found that the Respondent would not have hired the applicant regardless of his union activity.)

I find that letters sent by the Respondent to the discriminatees are self-serving and of no probative value. Furthermore, I credit the discriminatees denial that they received the letters, and I credit their testimony that they would have accepted employment with the Respondent. As Business Agent Hammel testified, "my job is to organize. I would work there for whatever job it is to try to organize" (Tr. 994).[2]

I have found that the actions of the Respondent's agents belie it's contention that it would not have hired the discriminatees even in the absence of their union affiliation or activities. Accordingly, I find that the Respondent has violated Section 8(a)(1) and (3) as the Act by, since August 9, 2001, reusing to consider for employment and/or refusing to employee the named discriminatees because of their union affiliation or union activities.

[2] The Respondent also argues, in essence, that the discriminatees are not "genuine applicants" (R. Br. 19, 21). It is the duty of an administrative law judge to apply established Board precedent. Accordingly, the analytical methodology I have applied is that expressed by Member Liebman in her concurring opinion in *Exterior Systems, above,* slip op. at 4.

Conclusions of Law

1. J & R Roofing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. United Union of Roofers, Waterproofers & Allied Workers, Local No. 30 is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Telling applicants for employment that it did not, and would not, hire any person affiliated with the Union or any other labor organization.

(b) Threatening to throw away the applications of any individual affiliated with the Union or any other labor organization.

(c) Throwing into a trash can applications completed by applicants for employment who were affiliated with the Union.

(d) Using an employment application form that included a question pertaining to union membership, thereby interrogating applicants for employment about their union membership, activities, and sympathies.

4. The Respondent violated Section 8(a)(3) and (1) of the Act by its refusal to consider for employment, and/or refusal to employ the following applicants based on their affiliation with a labor organization:

Michael Bailey, Fred J. Hammel, Timothy J. Kaisinger, Thomas F. Lowry, Keith Lypka, Joseph Mauro, William V. Reis, and Clark Shiley.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully discriminated against eight job applicants, I recommend that the Respondent offer them instatement to those jobs for which they applied and are qualified, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to the discriminatees' seniority or any other rights or privileges that they would have enjoyed had the Respondent not unlawfully discriminated against them.

I also recommend that the Respondent be ordered to make the discriminatees whole for any loss of earnings and other benefits, computed on a quarterly basis from date that they would have been hired to the date of proper offer of instatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, J & R Roofing Company, Inc., Jessup, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling applicants for employment that it did not, and would not, hire any person affiliated with the Union or any other labor organization.

(b) Threatening to throw away the application of any individual affiliated with the Union or any other labor organization.

(c) Throwing into a trash can applications completed by applicants for employment who were affiliated with the Union.

(d) Using an employment application form that includes a question pertaining to union membership, which thereby interrogates applicants for employment about their union membership, activities, and sympathies.

(e) Refusing to consider for employment, and/or refusing to employ job applicants based on their affiliation with the Union or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael Bailey, Fred J. Hammel, Timothy J. Kaisinger, Thomas F. Lowry, Keith Lypka, Joseph Mauro, William V. Reis, and Clark Shiley. full instatement to those jobs for which they applied and are qualified, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges that they would have enjoyed had the Respondent not unlawfully discriminated against them.

(b) Make Michael Bailey, Fred J. Hammel, Timothy J. Kaisinger, Thomas F. Lowry, Keith Lypka, Joseph Mauro, William V. Reis, and Clark Shiley whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Jessup, Maryland, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 2001.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 11, 2004

John T. Clark
Administrative Law Judge

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT tell applicants for employment that we have not, and will not, hire any person affiliated with the Union or any other labor organization.

WE WILL NOT threaten to throw away the application of any individual affiliated with the Union or any other labor organization.

WE WILL NOT throw away applications for employment solely because the applicants are affiliated with the Union or any other labor organization.

WE WILL NOT use an employment application form that includes a question pertaining to union membership, which thereby interrogates applicants for employment about their union membership, activities, and sympathies.

WE WILL NOT refuse to consider for employment, and/or refuse to employ job applicants based on their affiliation with the Union or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer offer Michael Bailey, Fred J. Hammel, Timothy J. Kaisinger, Thomas F. Lowry, Keith Lypka, Joseph Mauro, William V. Reis, and Clark Shiley, full instatement to those jobs for which they applied and are qualified, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges that they would have enjoyed had we not unlawfully discriminated against them.

WE WILL make Michael Bailey, Fred J. Hammel, Timothy J. Kaisinger, Thomas F. Lowry, Keith Lypka, Joseph Mauro, William V. Reis, and Clark Shiley whole for any loss of earnings and other benefits they may have suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

J & R ROOFING COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

103 South Gay Street, The Appraisers Store Building, 8th Floor, Baltimore, MD 21202-4061

(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (410) 962-3113.